

Notice of Allowability

Application No.

09/936,741

Examiner

Michael J Hayes

Applicant(s)

POPOV, SERGEY

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment received 6/29/04.
2. ☒ The allowed claim(s) is/are 96-107.
3. ☒ The drawings filed on 04 January 2002 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

EXAMINER'S AMENDMENT

Claims 100, 102-107 No Longer Withdrawn

Claim 96 is generic and allowable. Accordingly, the restriction requirement as to the encompassed species is hereby withdrawn and claims 100 and 102-107 are no longer withdrawn from consideration since all of the claims to this species depend from or otherwise include each of the limitations of an allowed generic claim.

In view of the above noted withdrawal of the restriction requirement as to the linked species, applicant(s) are advised that if any claim(s) depending from or including all the limitations of the allowable generic linking claim(s) be presented in a continuation or divisional application, such claims may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Amendment

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Daniel Swirsky on 18 August 2004.

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The application has been amended as follows:

IN THE CLAIMS:

Cancel claims 108-131

Claim 100 line 2 delete "the" and replace with --a--

Claim 100 line 2 delete "vector"

Claim 100 line 8 delete first occurrence of "proximal" and replace with --a--

Claim 100 lines 8-9 delete "that is the extreme proximal position of said shield"

Claim 100 line 10 delete "and as such serves"

Claim 100 line 10 delete "said outer surface" and replace with --the outer surface of said shield--

Claim 100 line 11 delete "proximal"

Claim 100 line 12 delete "proximal"

Claim 100 line 18 before second occurrence of "local" insert --the--

Claim 100 line 19 before "said shield height" insert --of--

Claim 100 line 19 before "local maximal" insert --the--

Claim 100 line 19 before "said shield width" insert --of--

Claim 105 line 1 delete "claims 102, 103, 104," and replace with --claim 103, wherein said cutting means comprises a penetrating apex cutting means protected by said penetrating apex shield, and--

Claim 105 line 2 before "outer cutting means" insert --said--

Claim 105 line 2 delete "made integral on the plate-shaped base" and replace with --integrally formed--

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Claim 105 line 3 before "low profile shield" insert --a--

Claim 105 line 3 before "longitudinal" insert --a--

Claim 105 line 4 delete "said plate base passes through" and replace with --through which said penetrating apex cutting means and said outer cutting means pass--

The following is an examiner's statement of reasons for allowance:

Claims 96-107 are allowed because the recited combination of elements of a trocar assembly including a trocar unit with an obturator with a penetrating end having cutting means for making an orifice, a penetrating apex and a sloping side wall that are immovable relative to the obturator, a penetrating apex shield surrounded by the sloping side wall that has an extended position to protect the apex and prevent tissue fibers from penetrating between apex shield and apex, and a bias means for biasing the shield toward an extended position is not found nor fairly taught in the prior art of record.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Hayes at (703) 305-5873. The examiner can usually be reached Monday -Thursday, 7:00-4:30, and on alternate Fridays. If attempts to reach the

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examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler, can be contacted at (703) 308-3552. The fax number for submitting official papers is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mjh
18 August 2004



MICHAEL J. HAYES
PRIMARY EXAMINER